



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 11-03110
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. He has addressed 12 of the 13 collection accounts alleged in the Statement of Reasons (SOR). He has mitigated the financial considerations security concern. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 7, 2013, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On February 25, 2013, Applicant answered the SOR and requested a hearing. On May 15, 2013, I was assigned the case. On May 31, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

convened on June 11, 2013. I admitted Government's Exhibits (Ex) 1 through 7 and Applicant's Exhibits A through J, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. K through Ex. Q) was submitted and admitted into the record without objection. On June 19, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, Applicant denied the debts at SOR 1.g. (\$100) and SOR 1.j (\$583) and admitted the remaining collection accounts. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 33-year-old senior support technician who has worked for a defense contractor since November 2005, and seeks to obtain a security clearance. (Ex. 1, Tr. 14) In 2000, he joined the U.S Army and in 2004, he separated as a sergeant (E-5). (Tr. 28) While serving in the Army, he received a certificate of achievement, a Good Conduct Medal, and an Army Achievement Medal. (Ex. O) He has received three achievement awards for exceptional performance and outstanding contributions at his current job. (Ex. Q) While in the Army, he married and his wife had a son from a prior marriage. (Tr. 28)

After leaving the Army, Applicant's employment and his increased living expenses caused him financial difficulties. Applicant's first job after leaving the Army paid him \$1,200 to \$1,300 per month. (Tr. 30) In February 2005, he and his wife separated. (Tr. 31, 43) In 2006, his debts were combined into a \$10,000 loan with \$135 monthly payments. (Ex. 2) He has paid or addressed all of the SOR debts except for the vehicle repossession (SOR 1.i, \$10,022) (Tr. 18)

In September 2003, Applicant purchased a 2000 car with monthly payments of \$300. (Ex. 4, Tr. 53) His June 2011 credit report shows 24 payments were made on the vehicle. (Ex. 5) He made his monthly payments until 2005, when he voluntarily returned the vehicle. After being repossessed, the vehicle was sold, but the amount owed did not decrease from the \$10,022 (SOR 1.i) that was owed on the vehicle prior its repossession. (Tr. 32) In August 2011, he stated he would contact the bank and determine what was still owed on the car loan and resolve it as soon as possible. (Ex. 2) He has yet to work out a repayment agreement with the creditor. (Tr. 53, 54) It was his intention to pay his other debts before addressing this debt, the largest of his collection accounts. (Tr. 66, 67)

In August 2011, Applicant was asked about his finances during a personal subject interview. (Ex. 2) At that time, he had not had any financial counseling, but was meeting his current financial obligations. (Ex. 2) In September 2012, he completed written financial interrogatories. At that time, his net monthly income was \$2,452 and his monthly expenses were \$1,177, which left a net monthly reminder of \$1,275. (Ex. 3) He had debts, but was not making payments on them.

Applicant paid three utility collection accounts (SOR 1.b, \$275; SOR 1.c, \$965; SOR 1.k, \$98). In June 2012, he started making \$200 monthly payments on the accounts and in April 2013, made a \$740 payment. (Ex. A, Ex. B) The utility company listed in SOR 1.b was purchased by the utility company listed in SOR 1.c. (Ex. J) He also paid the debt in SOR 1.l (\$1,021) by monthly installments. (Tr. 37)

Applicant has approximately \$1,000 in his checking account and \$1,800 in his saving account. (Ex. K) He has more than \$20,000 in his company's 401(k) retirement plan. (Ex. L) His annual salary is \$49,400. (Ex. P) His cohabitant's annual income is \$35,000 to \$40,000. His credit score has improved from 450 to 630. (Tr. 37) During the past few years, he has not acquired new debts. (Tr. 18) He recently paid off his 2005 vehicle. (Tr. 33) He is paying his debts on time and is not receiving calls or letters from creditors demanding payment. (Tr. 34)

A summary of Applicant's collection accounts and their current status follows:

	Creditor	Amount	Current Status
a	Cable bill collection account.	\$165	Paid. (Ex. E)
b	Collection account.	\$275	Paid. Starting in June 2012, Applicant made \$200 monthly payments on this and the utility account debts listed in c. and k. below.
c	Utility company collection account.	\$965	Paid on April 19, 2013. (Ex. A)
d	Collection account.	\$98	Paid on September 11, 2012. (Ex. B)
e	Utility company collection account.	\$918	Paid. (Ex. F) Starting in December 2012, Applicant made monthly payments that totaled \$1,197. (Ex. G)
f	Utility company collection account.	\$244	Paid. This is the same utility company listed in e. above.
g	Collection account.	\$100	Disputed. In February 2012, the account was challenged and deleted from his credit report. (Ex. C, Ex. D)
h	Medical collection account.	\$29	Paid on February 24, 2012. (Ex. H)
i	Apartment rent collection account.	\$1,021	Paid on September 23, 2011. (Ex. I)

	Creditor	Amount	Current Status
j	Loan collection account.	\$583	Applicant disputes this debt, asserting he never obtained this loan. (Tr. 34) Applicant contacted the creditor and asked for proof that this was his debt, but the creditor refused to provide any documents. (Tr. 51) The debt has been removed from his current credit reports. (Tr. 34)
k	Collection account for utility bill.	\$98	The account was challenged and removed from his credit report on September 13, 2012. (SOR Answer)
l	Repossessed vehicle.	\$10,022	Yet to be addressed.
m	Medical collection account.	\$55	Paid on February 27, 2012. (SOR Answer)
	Total debt listed in SOR	\$14,573	

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

After leaving the Army, Applicant experienced difficulty in paying his debts. He incurred collection accounts totaling approximately \$14,500. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

After leaving the Army in 2004, Applicant experienced financial problems due to increased living expenses, a decrease in salary, and separating from his wife. The SOR lists 13 collection accounts. One debt has yet to be addressed. In 2003, while still in the Army, Applicant purchased a three year old car. He made his required monthly payments for approximately two years before the low paying job he obtained after leaving the Army and his separation from his wife made it impossible for him to continue his monthly payments. Following the repossession, the vehicle was sold, but the sale failed to reduce the amount he owed. His obligation following the sale was the same as when he made his last payment.

Applicant chose to address all of the remaining SOR collection accounts before addressing the repossession. In so doing, he has established a track record of addressing his past due obligations. The concept of “meaningful track record” includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must

reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

In the past, Applicant was able to address delinquent collection accounts by making monthly payments. I believe he will be able to reach an agreement with the holder of the vehicle loan and again pay the obligation by monthly payments.

I conclude that the circumstances which gave rise to Applicant's financial delinquencies are not likely to recur in the future. Additionally, he acted responsibly when faced with a collection accounts he did not recognize. Two collection accounts (SOR 1.g, \$100 and SOR 1.k, \$98) were removed from his credit report when he challenged them. He disputes one additional debt (SOR 1.j, \$583) and requested the creditor provide documentation supporting the creditor's claim that he owes the debt. The creditor has yet to provide the requested documentation.

Applicant has acted in good faith to pay or settle his delinquent debts, and although he has not satisfied the vehicle repossession debt, he has displayed a determination to satisfy this financial obligation in the future. He made the decision to address the smaller delinquent debts before addressing the largest debt.

Applicant has acted responsibly in addressing his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. He provided documentary evidence to corroborate the payment of all but one of the delinquent collection accounts. I concluded that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are applicable in mitigation.

The sole remaining debt does not raise concerns about his current reliability, trustworthiness, or good judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. After leaving the Army, Applicant's income dropped. After obtaining his current job, he started addressing his delinquent collection accounts. One remains to be addressed, but his past conduct indicates he will pay this obligation.

The issue is not simply whether all Applicant's debts have been paid – the majority have been paid – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence establishes Applicant has mitigated the financial considerations security concerns

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge